words, according to the trial judge, there was evidence on which he could conclude that the injury to the plaintiff was causally connected with her wrongful act of momentary inattention. With due respect to the trial judge the evidence falls short of the requirement that the injury sustained by the plaintiff was of a kind or type of class reasonably foreseeable as a result of Mrs. Kenny's wrongful act, assuming she was wrongful.

The sole question in the present case is a question of causation. In my judgment it cannot be said that the particular teacher carelessly exposed the plaintiff to injury of the class or type that could reasonably have been foreseen. If the injury which resulted was injury by the sharp end of a pencil, then for the appellants to be liable they must have foreseen injury by the sharp end of a pencil. A pencil is not a dangerous article. All pupils use pencil in classrooms. Indeed the trial judge accepted appellants' contention that to say that there was a duty by them to instruct each and every pupil on the proper use of a pencil was to stretch things to a ridiculous extent. Again, assuming the injury to the plaintiff's eye was in fact caused by a wrongful act of the teacher — for not being attentive in class all the time — it cannot be said that it was reasonably foreseeable that the injury of this class or character was a reasonably foreseeable result of such a wrongful act. In my opinion, I cannot conclude as a matter of evidence and inference that more probably than not constant vigilance in the classroom would have prevented the injury which the plaintiff in fact received. There is no factual basis of the causal connexion between the step the trial judge was entitled to think the teacher ought, in the performance of her duty of care, to have taken, and the injury of which the plaintiff sustained. Because notwithstanding the proper exercise of supervision a recalcitrant pupil may act to the injury of a fellow pupil, it is prudent to see that the necessary causal relationship is made out. The effect of constant vigilance in class as a method of preventing a recalcitrant pupil from wandering about is often such a debatable matter that the causal relation between the lack of supervision and the injury caused to a fellow pupil may not be a matter of evidential probability but be no more than a matter of mere speculation.

Appeal allowed.

Solicitors: *Shearn, Delamore & Co.; A.K.J. D'Cruz & Co.*

OOI JIM & ANOR. v. AI EIT & ORS.

[F.C. (Gill C.J. (Malaya), Ong Hock Sim and Raja Azlan Shah F.J.) May 11, 1977]

[Alor Star — Federal Court Civil Appeal No. 114 of 1974]

Practice and Procedure — Action for declaration — Locus standi — Whether widow can claim declaration of status of her husband — Whether necessary to take out letters of administration.

The first appellant had applied for a declaration that her husband was the lawful adopted son of one Tan Ing who had died intestate. The application was dismissed as it was held that she should first obtain letters of administration of her husband's estate. On appeal to the Federal Court.

Held, allowing the appeal: it was not necessary for the first appellant to take out letters of administration to bring the action which was primarily an action for a declaration as to the status of her husband. The question of taking out letters of administration would only arise when it became necessary for her to claim her share in the estate of the intestate.

FEDERAL COURT.

A. Jayadeva for the appellant.

Triptipal Singh for the respondents.

Gill C.J. (Malaya) (delivering the judgment of the Court): This was an appeal by the first plaintiff in the action from a judgment of Syed Agil Barakbah J. dismissing her claim for a declaration that her deceased husband Tan Swee Teik was the lawful adopted son of Tan Ing @ Tan Eng @ Tan Teng Eng who died intestate in 1929 and that she as the lawful widow of the said Tan Swee Teik deceased was a beneficiary of the estate of the said intestate.

The main defence to the action by the respondents as defendants was that the first plaintiff had not taken out letters of administration to the estate of her deceased husband, and therefore could not commence an action to ask for the declaration sought. This point indeed was raised as a preliminary issue by counsel for the defendants. It was contended that the first plaintiff had no *locus standi*. The learned judge agreed with the point taken by counsel for the defendants and ruled that it was necessary for the first plaintiff to take out letters of administration of her husband's estate in order to proceed with her claim.

In our judgment it was not necessary for the first plaintiff to take out such letters of administration in order to bring this action which was primarily an action for a declaration as to the status of her husband. Declaratory proceedings are often the most convenient and sometimes the only possible mode of determining status. The question of taking out letters of administration would only arise when it became necessary for the first plaintiff to claim her share in the estate of the said intestate. We therefore allowed the appeal and remitted the case for trial in the High Court.

Appeal allowed.

Solicitors: *Oo Gin Sun, Bakar & Co.; Triptipal Singh & Co.*